

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,	)	
Employer-Below,	)	
Appellant,	)	
	)	
v.	)	C.A. No. 05A-04-004-JRJ
	)	
ISAIAH JACKSON,	)	
Claimant-Below,	)	
Appellee.	)	
	)	

Date Submitted: June 13, 2005

Date Decided: August 4, 2005

APPEAL FROM A DECISION OF THE INDUSTRIAL ACCIDENT BOARD.

DECISION AFFIRMED.

**OPINION**

John J. Klusman, Esquire, Susan A. List, Esquire, 300 Delaware Avenue, 11<sup>th</sup> Floor, Suite 1100, Wilmington, Delaware 19899. Attorney for Appellant State of Delaware.

Elwood T. Eveland, Jr., Esquire, 715 North King Street, Suite 200, Wilmington, Delaware 19801. Attorney for Appellee Isaiah Jackson.

JURDEN, J.

This is the Court's decision on the Employer State of Delaware's appeal of a decision of the Industrial Accident Board granting worker's compensation to Claimant Isaiah Jackson. For the reasons explained below, the Board's decision is **AFFIRMED**.

### **FACTS**

Isaiah Jackson (hereafter the "Claimant") was employed as a paratransit driver for Delaware Area Regional Transit (DART), an agent of the State of Delaware (hereafter the "Employer"). The Claimant typically worked the second shift from 2:30 to 10:30 p.m. The Claimant's regular duties included picking up the people listed on his daily manifest and transporting them to a specified location. The Claimant worked by himself with no attendant to assist with loading and unloading passengers. On June 16, 2004, the day of the incident, the Claimant stopped to pick up one of his passengers, an obese woman who he had transported on previous occasions. The Claimant had to assist her in boarding the bus, and, once inside, he helped her manipulate her electric wheelchair into position and buckle it into place. The Claimant recalls having a particularly hard time securing the chair and *believes* that he injured his arm attempting to do so. He recalls feeling some discomfort at the time, as well as some sharp pain after dropping the client off at her destination. The Claimant went home to bed directly after his shift, and at approximately 3 a.m., was awakened by sharp pain and extreme swelling and redness in his right arm.

Later that morning he informed the Employer that he was unable to work that day because of the pain and swelling in his arm. The Claimant then proceeded to the Veterans Administration ("VA") Hospital emergency room for treatment. At the VA Hospital, the Claimant was treated by Dr. Tzanis. The Claimant recalls telling Dr. Tzanis that his injury occurred while working.

Dr. Tzanis referred the Claimant Dr. Valiveti, a board-certified rheumatologist and internist, who testified on the Claimant's behalf at the Board Hearing. Dr. Valiveti testified that she was able to conclude, with a reasonable degree of medical probability, that a minor trauma, such as that as described by the Claimant to have occurred June 16, 2004, could have cause the reflex sympathetic dystrophy ("RSD").

### **STANDARD OF REVIEW**

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The Court determines whether the agency's decision is supported by substantial evidence and is free from legal error.<sup>1</sup> Substantial evidence is such relevant evidence that a reasonable mind would accept as adequate to support a conclusion.<sup>2</sup> This Court does not act as the trier of fact, nor does it have authority to weigh the evidence, decide issues of credibility, or make factual conclusions.<sup>3</sup> Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.<sup>4</sup>

### **DISCUSSION**

On appeal, the Employer argues that the Board erred as a matter of law and fact by granting the Claimant's petition, asserting that it is not supported by substantial evidence. The Claimant argues, in response, that the Board ruled correctly in determining that his injury was the result of an incident at work and, therefore,

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<sup>1</sup> *General Motors v. McNemar*, 202 A.2d 803, 805 (Del. 1964); *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960).

<sup>2</sup> *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

<sup>3</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

constituted a compensable injury. The Claimant further argues that his petition was supported by substantial evidence, that the Board acted within its clear discretion by ruling in his favor, and that the Employer failed to prove that the Board based its decision on other than substantial evidence, or that an abuse of discretion occurred.

Dr. Ger, an orthopedic surgeon, testified on behalf of the Employer. He examined the Claimant and his medical records in December of 2004, approximately six months after the incident occurred. Based primarily on a review of the Claimant's records, Dr. Ger opined that he did not believe there was any evidence that the Claimant's condition was related to an injury sustained while at work. He cited the VA records from Claimant's June 17 emergency room visit, which do not include any reference to an injury or trauma at work. Dr. Ger did not provide an alternate diagnosis for the Claimant's condition. As a result, the Board determined that the Claimant's injury was compensable.

The Board found that the Claimant had met his burden of proof by establishing that he is indeed inflicted with RSD and that it was caused by his work activities on June 16, 2004. The Board's decision was based on the testimony of Dr. Valiveti, as well as the testimony of the Claimant. The Board chose to accept the testimony of Dr. Valiveti over that of Dr. Ger for a number of reasons. The primary reasoning is that Dr. Valiveti met with and examined the Claimant numerous times immediately after the incident and on a continual basis, while Dr. Ger, on the other hand, examined the Claimant only once and not until six months after the onset of his symptoms. In addition, Dr. Valiveti

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<sup>4</sup> *Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. Ct. 1958).

testified that the trauma triggering RSD does not have to be a significant incident, but can occur from minor trauma, and potentially be so minor as to go unnoticed.

The Board found Dr. Valiveti's testimony more credible than that offered by Dr. Ger and acted well within its discretion in doing so.<sup>5</sup> The Employer fails to provide the persuasive evidence required for this Court to find otherwise. The Board found that the Claimant's injury was compensable because according to Dr. Valiveti's testimony, the Claimant's June 16, 2004 activities could have provided, within a reasonable degree of medical probability, a sufficient trigger for a condition such as RSD. This Court finds no reason to remand this decision for reconsideration. It is perfectly within the discretion of the Board to make rulings with regard to the credibility of expert witnesses and it is not, in fact, within the discretion of this Court to review such findings absent an abuse of discretion or an error of law.

### **CONCLUSION**

For the foregoing reasons, the Court concludes that there is substantial evidence in the record to support the Board's ruling in this case and accepts the Board's credibility and factual determinations. The Court, therefore, will not disturb the Board's decision. Accordingly, the decision of the Industrial Accident Board is **AFFIRMED**.

**IT IS SO ORDERED.**

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Jan R. Jurden, Judge

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<sup>5</sup> *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992).